

Committee on Resources, Subcommittee on Forests & Forest Health

[forests](#) - - Rep. Scott McInnis, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6205 - - (202) 225-0691

Subcommittee on Water & Power

[water](#) - - Rep. Ken Calvert, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6204 - - (202) 225-8331

Witness Statement

**Statement of
Randy Phillips
Deputy Chief, Forest Service
United States Department of Agriculture
Subcommittee on Forests and Forest Health
Subcommittee on Water and Power
Committee on Resources
United States House of Representatives
on
May 22, 2001
Concerning**

Bypass Flows on National Forest System Lands

Members of the Committee, thank you for the opportunity to appear before you today. I am Randy Phillips, Deputy Chief for Programs and Legislation, USDA Forest Service. I am here today to present the views of the Department regarding the use of bypass flows in the management of national forest lands.

Introduction

The bypass flow issue has raised considerable concerns among a number of water users in the West, particularly in this year of unusually low snow pack. As you know, the Forest Service is currently involved in litigation over the use of bypass flow. While this suit prevents a discussion of matters related to the litigation, I would like to share with the Committee the agency's policy views.

Madigan Letter

The Secretary has received several letters from Members of Congress requesting the direction established by Secretary Madigan in an October 6, 1992 letter to Senator Hank Brown be re-instated. A written response to these letters is forthcoming. The Administration is reviewing the direction that this letter suggested and will consider the benefits and costs of a change from current policy.

Collaboration

It is Forest Service policy and custom to work cooperatively with water facility permit holders to ensure that these authorizations appropriately consider environmental values while enabling permittees to operate and maintain their water facilities. The Forest Service's water policy manual dated May 1974, and amended in 1980, states "The Forest Service in all matters related to water use and water rights, will endeavor to work cooperatively with the States. Such cooperation will recognize the State's authority and responsibilities for allocation of waters within the State, and the need for the State to be informed as to uses and future needs of water on the National Forests." This policy guidance also states: "Even though a beneficial use of water on National Forest System lands is made by a permittee in connection with the use and occupancy of such lands, the Regional Forester retains the authority to make discretionary determinations of needed management actions in accordance with the rules and regulations for the use and occupancy of these lands." It is therefore the responsibility of the Regional Forester to work with the State, permittees, and other interested parties to resolve issues related to the re-authorization of water facility permits.

On November 30, 2000, the Forest Service completed a white paper titled "Water for the National Forests and Grasslands: Instream Flow Protection Strategies for the 21st Century." The purpose of this paper was to inform national forest managers of currently available tools to use in dealing with a variety of in-stream flow water issues, to encourage more collaboration with State, tribal and local officials on these issues, and to discuss recent court rulings involving agency in-stream flow claims. This white paper is currently under review.

Conclusion

The Forest Service recognizes the sensitivity of the bypass flow issue in its dealings with thousands of permit holders. The agency is committed to working with States, permittees, interested parties, and Congress to address concerns associated with water facility re-authorization. We believe, however, that any course we choose will inevitably require local people to work together to find common sense solutions.

This concludes my testimony. I would be happy to answer any questions that you may have.

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